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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,394	09/01/2005	Eiji Sunahara	Q101062	4910
23373 7590 05/06/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER DUFFY, BRADLEY				
ART UNIT 1643		PAPER NUMBER		
MAIL DATE 05/06/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10540394	9/1/2005	SUNAHARA ET AL.	Q101062

EXAMINER

BRADLEY DUFFY

ART UNIT	PAPER
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1643 20090504

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

1. Applicant has filed remarks on January 15, 2009 traversing the notice of non-responsive amendment mailed October 29, 2008, in which Applicant has argued that changing the amino acid sequence of SEQ ID NO:1 to recite a different amino acid sequence than that originally presented does not change the special technical feature of the originally examined antibody claims because "the change in the sequence listing does not alter the claimed antibody so as to render the antibody incapable of specifically binding the antigen comprising the original amino acid sequence of SEQ ID NO:1".

In response, this argument is not found persuasive because changing the amino acid sequence of a polypeptide results in a structurally and functionally distinct polypeptide. Accordingly, because of the difference in 3-dimensional structure between the antigens there would be differences in antibodies that specifically bind such distinct antigens. For example, if Applicant had presented claims drawn to antibodies that specifically bind to antigen X and other claims to antibodies that specifically bind an antigen Y, such claims would be said to lack the same special technical feature because the antibodies must bind different antigens. That is exactly the case here because Applicant has changed the amino acid sequence of the originally presented and examined antigen, so that the claimed antibodies now must bind a structurally and functionally distinct antigen. Accordingly, because the amino acid sequence of the antigen is different, the special technical feature of the claimed antibodies is now different. Notably, this change in special technical feature is evidenced, for example, by the fact that changing the amino acid sequence of the antigen would necessitate a new and unique sequence search of the amended SEQ ID NO: 1.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits.

Accordingly, for these reasons and the reasons set forth in the notice of non-responsive amendment mailed October 29, 2008, and after careful and complete consideration of Applicant's response, it is maintained that after entry of the amendment, all remaining claims would be withdrawn from consideration as being directed to non-elected inventions, and therefore the amendment, which presents only claims drawn to such non-elected inventions, is non-responsive and will not be entered. See 37 CFR 1.142(b) and MPEP § 821.03.

2. Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brad Duffy whose telephone number is (571) 272-9935. The examiner can normally be reached on Monday through Friday 7:00 AM to 4:30 PM, with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms can be reached on (571) 272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully,
Brad Duffly
Examiner, Art Unit 1643
571-272-9935

/bd/
Examiner, Art Unit 1643
May 5, 2009

/Stephen L. Rawlings/
Primary Examiner, Art Unit 1643